UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN UTAH WILDERNESS ALLIANCE *et al.*,	:		
Plaintiffs,	:	Civil Action No.:	08-2187 (RMU)
v.	:	Document No.:	14
STEPHEN ALLRED, in his official capacity as Assistant Secretary for Lands and Minerals Management of the United States Department of the Interior *et al.*,	:		
Defendants.	:		

MEMORANDUM ORDER

GRANTING THE PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND DEFERRING RULING ON THE PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

This case is before the court on the plaintiffs' motion for a temporary restraining order ("TRO") and preliminary injunction. The plaintiffs, seven conservation, environmental and historic preservation organizations, ask the court to enjoin the defendants, the Assistant Secretary for Lands and Minerals Management of the U.S. Department of the Interior, the Deputy State Director of the Bureau of Land Management's ("BLM") Utah Office and the BLM, from issuing oil and gas leases for seventy-seven parcels of land. Bringing suit pursuant to the Administrative Procedure Act ("APA"),[1] 5 U.S.C. § 702, the plaintiffs allege violations of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332, the National Historic

[1] Judicial review of agency actions under NEPA, NHPA and FLPMA are governed by the APA. *Tulare County v. Bush*, 306 F.3d 1138, 1143 (D.C. Cir. 2002) (NEPA); *Nat'l Trust for Historic Pres. v. Blanck*, 938 F.Supp. 908, 915 (D.D.C. 1996) (NHPA); *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745 (D.C. Cir 2007) (FLMPA).

Preservation Act ("NHPA"), 16 U.S.C. § 470f, and Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. 1712(c)(8). Because the plaintiffs have met the burden for injunctive relief the court grants their motion for a TRO.

II. FACTUAL & PROCEDURAL BACKGROUND

On December 12, 2008, BLM announced that it would lease 163,935 acres of property in Utah for oil and gas development.[2] Compl. ¶ 97. The lease sale occurred on December 19, 2008. Pls.' Mot. at 11. The plaintiffs filed their complaint on December 17, 2008 seeking, *inter alia*, to have BLM's decision to authorize the leases declared invalid under the APA. Compl., Prayer for Relief ¶¶ 1-3. On December 18, 2008, the parties filed a joint stipulation requesting an expedited briefing schedule and stating that BLM will not officially issue the leases for thirty days following the lease sale. Joint Stipulation (Dec. 18, 2008). On December 22, 2008, the plaintiffs filed a motion for a temporary restraining order and preliminary injunction asking the court to enjoin BLM from issuing the contested leases. *See generally* Pls.' Mot. The court turns now to the plaintiffs' motion.

[2] The affected areas include the Desolation Canyon stretch of the Green River, "one of the largest roadless areas in the lower forty-eight states," and Nine Mile Canyon, described as "the longest outdoor gallery in the world." Pls.' Mot. at 1.

III. ANALYSIS

This court may issue interim injunctive relief only when the movant demonstrates "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008) (citing *Munaf v. Geren*, 128 S. Ct. 2207, 2218-19 (2008)).

NEPA requires that BLM prepare an Environmental Impact Statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment," such as issuing gas and oil leases. 42 U.S.C. § 4332 (2)(C). When preparing the EIS, BLM must consider "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas[] [and] [t]he degree to which the proposed action affects public health or safety." 40 C.F.R. § 1508.27(b)(3), (2). By not engaging in quantitative ozone dispersion modeling,[3] the plaintiffs' point out that BLM is unable to assess the concentration of pollution in the air and therefore cannot adequately measure those pollutants which are expressed in ambient concentrations. Pls.' Mot. at 18. Thus, the plaintiffs have made the requisite likelihood of success showing as to their NEPA claim. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). That is, BLM cannot rely on EISs that lack air pollution and ozone level statistics.

Additionally, the plaintiffs have made a showing of success on the merits of their NHPA and FLMPA claims. BLM is subject to NHPA in this instance because the leasing of public land

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[3] "Quantitative modeling refers to the process of predicting ambient concentrations of a given pollutant in an area using computer models that consider emission rates, weather, and topography, among other factors." Pls.' Mot. at 17.

is an action "funded in whole or in part under the direct or indirect jurisdiction of a Federal Agency." 16 U.S.C. § 470w(7); 36 C.F.R. § 800.3(a). As such, BLM must determine if the lease sale has the "potential to cause effects on historic properties." 36 C.F.R. § 800.3(a). BLM has a parallel responsibility under the FLMPA to protect the "quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values" of public land. 43 U.S.C. §1701(a)(8). Because BLM did not take into account the effect of air pollution on areas outside of Nine Mile Canyon it has considered sufficent evidence to determine if the lease sale has the "potential to cause effects on historic properties." 36 C.F.R. § 800.3(a). Due to these deficiencies the plaintiffs have shown a likelihood of success on the merits.

Moreover, because the lease sale represents the point at which the BLM makes an "irreversible and irretrievable commitment[] of resources," the plaintiffs have met their burden of showing irreparable injury. *Cf. Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983) (holding that BLM loses the power to deny certain actions under leases without clauses prohibiting surface occupancy). Whereas many of the leases at issue in this case do not contain those clauses, the plaintiffs are facing irreparable harm absent an injunction. Because of the threat of irreparable harm to public land if the leases are issued, the balancing of equities also tips in favor of the plaintiffs. *See Nat'l Wildlife Fed. v. Burford*, 676 F. Supp. 271, 279 (D.D.C. 1985) (acknowledging that the injunction would harm lessees but noting that it doesn't outweigh the other factors supporting the injunction, including the likelihood of permanent damage to public lands). Finally, although the court recognizes that the "development of domestic energy resources," is an important public interest, Fed. Defs.' Opp'n at 43, this interest is far

outweighed by the public interest in avoiding irreparable damage to public lands and the environment is preferable in this instance.

IV. CONCLUSION

For the foregoing reasons, it is this 17th day of January 2009, hereby

ORDERED that the plaintiffs' motion for a temporary restraining order is **GRANTED**; and it is

FURTHER ORDERED that the temporary restraining order will remain in effect until further order of the court; and it is

ORDERED that the defendants and intervenors shall file, at their discretion and pursuant to the court's Standing Order for civil cases, additional briefing on the issue of a preliminary injunction on or before January 23, 2009, and the plaintiffs shall file any further reply as needed on or before January 30, 2009.

SO ORDERED.

RICARDO M. URBINA
United States District Judge